

NO. 5. 1807. Nov. 17. JANET WIGHTMAN *against* JOHN TOMLINSON.

What amounts to *semplena probatio*, that a particular man is father of a bastard child?

JANET WIGHTMAN brought an action before the Commissary of Glasgow against John Tomlinson, for aliment of her bastard child. In defence, he denied being the father of it. She craved that he might be judicially examined, which was done, and his declaration was in these words:—" That the pursuer, in November 1803, was servant with Dr Rankin in the town of Douglas: That before this time the declarant may have seen or spoke to her in the said town of Douglas: That in the month of October 1803 he thinks he was first in company with the pursuer, and no other person was then present: That this happened about one o'clock in the morning, when the declarant called on the pursuer at the house of her said master Dr Rankin: That the declarant and the pursuer remained together for about an hour and a half: That the last time he was in company with the pursuer, was on the 2d November 1803, in the house of the said Dr Rankin in Douglas: That he is sure of this date, as he recollects it was nine days before Martinmas term 1803, and he was never afterwards in company with the pursuer by herself alone. But in the month of August last, the pursuer and her mother came to the declarant's house in Douglas, and the pursuer then accused the declarant of being the father of the child with which she was then pregnant; and the declarant said to her, that if the child came to his time he would acknowledge himself as father; and he meant by his time, that the birth should correspond with the aforesaid 2d November, or the dates of his visits to the pursuer on the previous month of October. And being shewn a letter, dated 14th November last, signed John Tomlinson, and addressed to the Reverend Mr M'Cubbin, Douglas,—declares, That the subscription to the said letter is the declarant's handwriting."

The letter referred to, and which had been written by the defender previous to his being cited in the action, was as follows:—" 14th Nov. 1804. Sir, Your letter to my father of this date I have seen, and agreeably thereto do *confess being guilty* with Janet Wightman, *but I am by no means the father of her child.*"

On this declaration and letter the pursuer craved that she might give her oath in supplement. The Commissary allowed the pursuer the benefit of her oath in supplement.

The cause having come before the Court of Session by advocacy, the interlocutor of the Lord Ordinary was, (November 12. 1806),—" In respect " it appears that the judicial declaration of the defender, and his letter to " the Reverend Mr M'Cubbin, of date 14th November 1804, which the " pursuer has stated to be all the proof she has to adduce, afford no evi- " dence that the defender is the father of the pursuer's child ; finds, that " the pursuer is not entitled to be admitted to the benefit of her own oath, " which, although it might be received to supply an imperfect proof, can- " not be admitted to the effect of contradicting the only evidence which " has been brought in this cause ; therefore remits to the Commissary of " Glasgow, with instructions to recall the interlocutors complained of, and " to assoilzie the defender."

The pursuer reclaimed. On advising the petition and answers, the Court (March 7. 1807) refused the petition, and adhered to the interlocutor of the Lord Ordinary.

The pursuer presented a second petition. On advising which, with answers, the Court (July 1807) by a majority, " altered the interlocutors re- " claimed against, and remitted to the Lord Ordinary, with an instruction " to allow the pursuer to give her oath in supplement, and thereafter to " proceed farther in the cause as to his Lordship shall seem proper."

The defender reclaimed.

But the Court (November 17. 1807) chiefly moved by his letter, which, it was observed, contained no limitation of time, refused his petition, without answers.

Lord Ordinary, *Robertson.*
Clerk, *Pringle.*

Act. *John Cunningham.*

Agent. *James Hamilton, W. S.*

M.

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